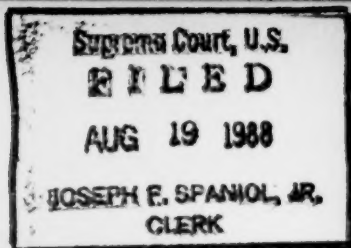


(2)  
No. 88-65



In the  
SUPREME COURT OF THE UNITED STATES  
October Term, 1988

BYRNECE S. GREEN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

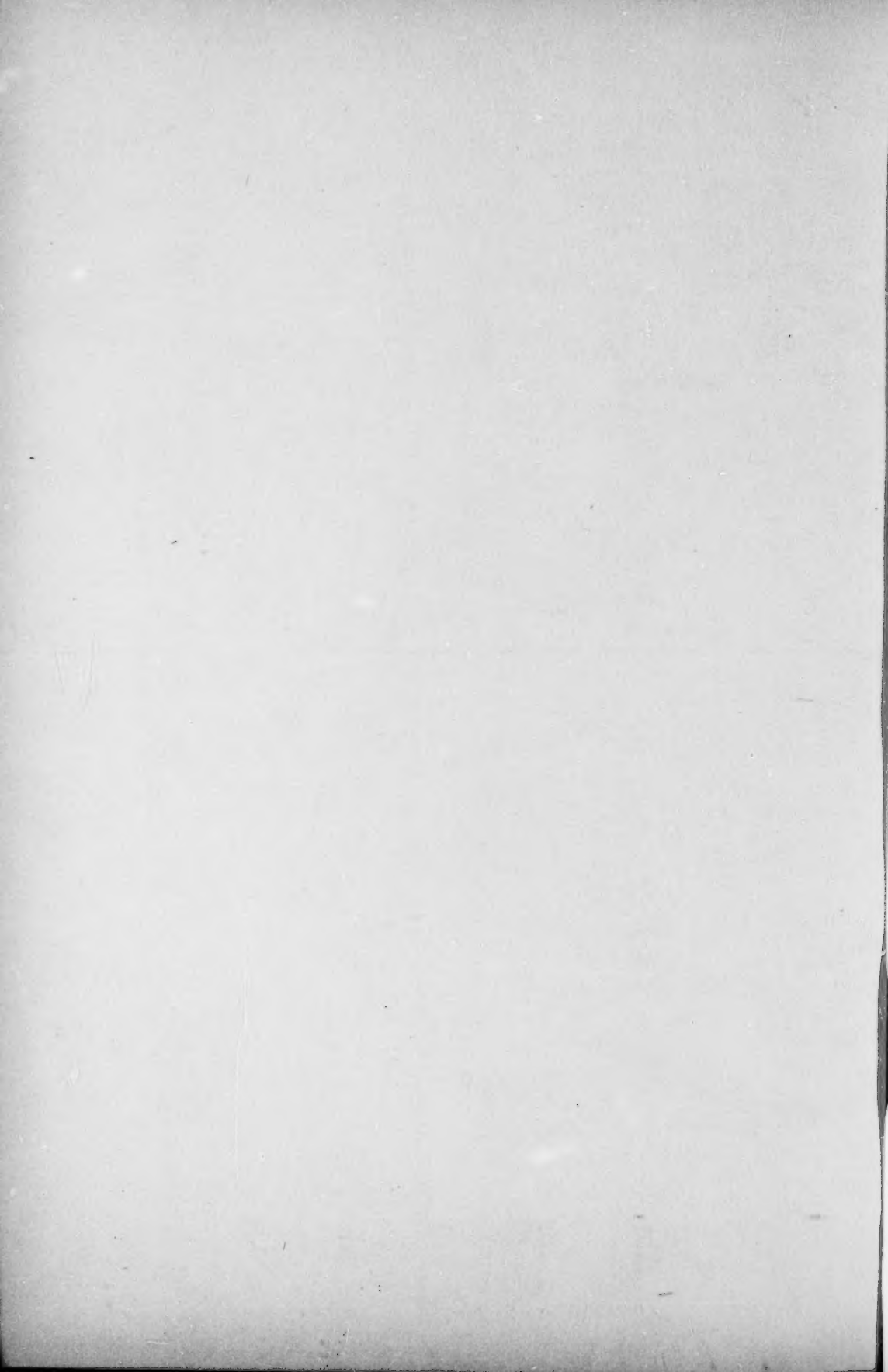
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**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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The Tax Court's decision in *Getty v. Commissioner*, 91 T.C. No. 16, issued on July 27, 1988, lends additional support to the granting of the Writ of Certiorari sought by the above-named Petitioner.

The taxpayer in *Getty* was Jean Ronald Getty ("Ronald"), one of the four surviving sons of J. Paul Getty ("Paul"). Paul had created a trust in 1934. At his death that trust held a controlling interest in Getty Oil Company and produced income of millions of dollars per year. Only \$3,000 per year of that income was allocated to Ronald; the balance was allocated to his brothers.

Paul had allegedly promised Ronald that he would equalize the trust income allocation, but he died without having done so. Ronald sued the trustees and other beneficiaries of the trust and Paul's residuary legatee, and recovered in settlement \$10 million.

The Tax Court said that the \$10 million would have been excludable from Ronald's gross income if it had been received in lieu of

an outright bequest. However, because it was received in lieu of an income interest in a trust, the \$10 million was includable in Ronald's gross income (citing IRC § 102(b)). "The origin, goal, and measure of ... [Ronald's] claim," said the Tax Court, "was income."

In contrast, the "origin, goal, and measure" of the Petitioner's claim was a promised outright bequest of property, rather than of an income interest. The Petitioner's receipt was, therefore, nontaxable.

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